THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.16811 of 2006

14.08.2006

Between:

District Cooperative Central Bank, Kurnool
Represented by its General Manager
And another

… Petitioners

AND

The Collector, Kurnool District at Kurnool
And others

… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.16811 of 2006

ORDER:

District Cooperative Central Bank, Kurnool (DCCB), and Pathikonda Large Sized Cooperative Society Limited filed the instant writ petition seeking a writ of Mandamus directing the respondents 1 to 3 not to pay any compensation to respondents 4 to 146 in respect of lands of those respondents, which are acquired for public purpose.

Respondents 4 to 146 allegedly availed short term and long term agricultural loans from the petitioner society (financed by DCCB) duly mortgaging the lands owned by them situated at Pandikona, P.Kothapalli and Dudekonda Villages of Pathikonda Mandal in Kurnool District to the second petitioner society. These lands of the respondents 4 to 146 were acquired by respondents 1 to 3 for Srisailam Project, Handri Neeva Sujala Sravanthi Scheme, Main Canal, Unil-III. According to the petitioner society, after due process of law, award enquiry has not been conducted, as the land of the respondents 4 to 146 was acquired by negotiations. The petitioner society approached the respondents 1 to 3 and requested to pay the compensation payable to respondents 4 to 146 to the petitioner society towards discharge of the crop loans, in vain. The petitioners contend

that if the amount is paid to respondents 4 to 146 ignoring the claims of the petitioner society, without insisting 'No Due Certificate' from them, it would cause loss and hardship to them. Therefore, the present writ petition is filed.

After hearing the learned Counsel for the petitioners and learned Assistant Government Pleader for respondents 1 to 3, the question that would arise is whether as mortagee of the agricultural lands of the respondents 4 to 146, which were mortgaged to the petitioner society, the petitioners are entitled to claim compensation under the Land Acquisition Act, 1894. This aspect of the matter is governed by Section 73(2) of Transfer of Property Act, 1873, which reads as under.

> **73. Right to proceeds of revenue sale or compensation on acquisition:-**
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> (2) Where the mortgaged-property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force, providing for the compulsory acquisition of immovable property the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of the amount due to the mortgagor as compensation.

In an unreported judgment of this Court in **Thamshi Primary Agricultural Cooperative Society v LAO/RDO, Adilabad District**[1], I have considered this aspect of the matter. In that case, by the time Primary Agricultural Cooperative Society filed writ petition before this Court for almost similar relief, award enquiry was pending and, therefore, this Court made the following order.

> Similar Writ Petitions being W.P.No.25531 and 25532 of 2002 filed by cooperative societies were disposed of by this Court on 26.8.2004, observing as under.
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> > Therefore, this Court holds that the writ petitions are filed on a mere apprehension by the PACSs and Adilabad DCCB without first approaching the first respondent. If the PACSs hold valid mortgage as on the date of issue of notification under Section 4(1) of the Act, it shall be open to the respective primary societies to approach the Land Acquisition Officer, Nirmal claiming their rights. If the amounts claimed by the petitioner societies are disputed by the landowners, the matter may be referred to the Civil Court for orders under Section 30 of the Act. In these writ petitions no relief, as prayed, can be granted.

In this case, the petitioners allege that award enquiry was not conducted, as the compensation was fixed by the respondents 1 to 3 by negotiations with respondents 4 to 146 under A.P.Land Acquisition (State Level Negotiation Committee) Rules, 1998. Though the petitioners allegedly approached the respondents 1 to 3, their case was not considered. The submission that award enquiry was not conducted when the land is acquired as per the negotiations cannot be accepted. Even where the officials resorted to move on negotiations for acquiring the land, there has to be a formal award. Therefore, the Special Deputy Collector, Land Acquisition, Srisailam Project, second respondent herein, has to consider the application of the petitioners in the matter of payment of compensation to respondents 4 to 146 without insisting upon 'No Due Certificate' from the petitioners. Liberty is also given to the petitioners to make a detailed representation enclosing a copy of this order.

The writ petition, with the above observations, is accordingly disposed of. No costs.

(**V.V.S.RAO, J**)

August 14, 2006.

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[1] W.P.No.21058 of 2005, dated 28.9.2005